

Appl. No.: 09/693,511
Amdt. dated 03/15/2006
Reply to Office action of 12/15/2005

REMARKS

This response is submitted in reply to the final Office Action dated December 15, 2005. Claims 1, 3-11, 13-16, 18 and 20-23 currently stand rejected.

In light of the remarks presented below, Applicants respectfully request reconsideration and allowance of all now-pending claims of the present invention.

Furthermore, Applicants respectfully request that any subsequent rejection address each of the Applicants' arguments below, for the sake of completeness of the written record.

Claim Rejections - 35 USC §103

Claims 1, 3-5, 7-11, 13, 14, 16, 18 and 20-23

Claims 1, 3-5, 7-11, 13, 14, 16, 18 and 20-23 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Merchant et al. (U.S. Patent No. 6,775,290, hereinafter "Merchant"), in view of Rijhsinghani et al. (U.S. Patent No. 6,526,052, hereinafter "Rijhsinghani"), and further in view of Denning et al. ("Location-Based Authentication: Grounding Cyberspace for Better Security"; copyright 1996; pages 1-6, hereinafter "Denning").

I. Independent claim 1 is patentable over the references.

Independent claim 1 recites, *inter alia*, a processor that communicates with an access concentrator to receive a plurality of port identifiers assigned by the access concentrator wherein each port identifier is associated with a location-specific connection port. In other words, the present application discloses a method and apparatus for implementing location-based identification in a communication network. Such location-based identification is not limited to identification of a particular address or port, as disclosed in the cited references. Rather, location-based identification identifies service recipients by their location and not just by port or address. Thus, for example, a floor of a building, a wing of a building, or an entire building may

Appl. No.: 09/693,511
Amdt. dated 03/15/2006
Reply to Office action of 12/15/2005

be one location in which all ports have a same location-specific identification (see page 10, lines 23-25).

The final Office Action cites Merchant as disclosing a location-specific connection port. To the contrary, Applicants respectfully submit that no such disclosure exists in Merchant and thus, Merchant fails to teach or suggest a location-specific connection port. Specifically, the final Office Action asserts that Merchant discloses a location-specific connection port at col. 1, lines 54-59 and col. 1, lines 39-43. However, at col. 1, lines 54-59, Merchant merely discloses "storing VLAN data indicating a plurality of VLAN identifiers corresponding to the multiple VLANs supported by the port" and comparing "the VLAN identifier of a data packet received via the port ... with the plurality of VLAN identifiers ... [of] the stored VLAN data". This cited passage of Merchant is completely devoid of any teaching or suggestion that any of the VLANs or even any of the VLAN identifiers is location-specific. In fact, there is nothing location-specific about either a VLAN identifier or a VLAN group that would even suggest location specificity unless, for example, a VLAN group was specifically defined to correlate to a specific location. No such teaching or suggestion exists in col. 1, lines 54-59 of Merchant. Furthermore, at col. 1, lines 39-43, Merchant merely discloses that "many VLAN implementations define VLAN membership by groups of switch ports. For example, ports 1, 2, 3, 7 and 8 on a switch make up VLAN A, while ports 4, 5 and 6 make up VLAN B. Alternatively, VLAN membership may be based on MAC addresses." This cited passage is similarly devoid of any teaching or suggestion of location specificity associated with either of the groups VLAN A or VLAN B. Defining a VLAN group in terms of a plurality of ports is in no way suggestive that the grouping was made based on any location much less that the VLAN group is associated with a specific location. In fact, Merchant fails to teach or suggest that any VLAN group correlates to a specific location.

The Office Action proposes a scenario in which ports from a certain floor to which machines from department C are connected are within one of the VLAN groups. The Office Action then asserts that the machines that are associated with the VLAN group "are specifically located on a certain floor of a building". Applicants respectfully point out that such a scenario is not disclosed in any of the cited references and thus, the statement in the Office Action fails to

Appl. No.: 09/693,511
Amdt. dated 03/15/2006
Reply to Office action of 12/15/2005

even assert that Merchant teaches or suggests a location-specific connection port as claimed in independent claim 1. Furthermore, even if the precise scenario proposed were disclosed in Merchant, Merchant would still fail to teach or suggest a location-specific connection port since the mere fact that some ports in a VLAN group are collocated on a same floor does not suggest that the connection ports are location-specific without some evidence that the ports or at least the group is defined based on location. Since Merchant lacks any such disclosure, Merchant fails to teach or suggest a processor that communicates with an access concentrator to receive a plurality of port identifiers assigned by the access concentrator wherein each port identifier is associated with a location-specific connection port as claimed in independent claim 1.

Since Merchant does not disclose a location-specific port, the Examiner is using personal knowledge to fill in the gaps between the claimed invention and Merchant. The Examiner can use "common knowledge" in a rejection by taking official notice of a fact, however, according to MPEP 2144.03, it is not appropriate to do so unless the facts asserted are capable of instant and unquestionable demonstration as being well-known. Additionally, as was stated in MPEP 2144.03 regarding *In re Zurko*, 258 F.3d 1379, 1385, 59 USPQ2d at 1697, "the Board cannot simply reach conclusions based on its own understanding or experience – or on its assessment of what would be basic knowledge or common sense. Rather, the Board must point to some concrete evidence in the record in support of these findings." Since no basis for the Examiner's statement regarding location specificity of ports can be found in Merchant, Applicants "seasonably challenge" the Examiner's use of personal knowledge to fill in the gap under MPEP 2144.03 citing the patent laws.

Rijhsinghani fails to cure the deficiency of Merchant. Rijhsinghani discloses "[determining] the appropriate VLAN tag to add to the communication before transmission via the trunk port to the high speed LAN backbone or trunk 265". However, there is no teaching or suggestion in Rijhsinghani, in general, or the cited passage, in particular, that the VLAN tag is associated with a location-specific connection port as claimed in independent claim 1. Furthermore, Rijhsinghani specifically teaches that VLANs may be defined as either port based, protocol based, address-based, or some combination of port, address and protocol based (col. 9, lines 30-34). In light of Rijhsinghani's specific teaching of VLANs defined as other than

Appl. No.: 09/693,511
Amdt. dated 03/15/2006
Reply to Office action of 12/15/2005

BEST AVAILABLE COPY

location-based and the absence of any teaching or suggestion of location-specific connection ports in Rijhsinghani, it cannot be fairly suggested that Rijhsinghani teaches or suggests a processor that communicates with an access concentrator to receive a plurality of port identifiers assigned by the access concentrator wherein each port identifier is associated with a location-specific connection port as claimed in independent claim 1. While Denning is not cited as showing such feature, it should be noted that Denning is directed to location based authentication, but fails to teach or suggest each port identifier is associated with a location-specific connection port as claimed in independent claim 1.

Since Merchant, Rijhsinghani and Denning each fail to teach or suggest a processor that communicates with an access concentrator to receive a plurality of port identifiers assigned by the access concentrator wherein each port identifier is associated with a location-specific connection port as claimed in independent claim 1, any combination of the cited references also fails to teach or suggest the subject matter of independent claim 1. Thus, the cited references, taken either individually or in combination, do not render independent claim 1 obvious.

II. Independent claims 7 and 18 are patentable over the references.

Applicants respectfully submit that independent claims 7 and 18 also recite a location-specific connection port as claimed in independent claim 1. Since the cited references fail both individually and in combination to teach such feature, independent claims 7 and 18 are patentable for at least the same reasons as given above for independent claim 1. Furthermore, independent claim 7 recites, *inter alia*, that the location-specific connection ports are identified by assigning a port identifier that is mapped to a location of the connection port. A similar recitation is also found in independent claim 18. None of the cited references teach any such mapping. In particular, Merchant discloses tables for associating particular VLAN ports with particular VLAN groups (see Figures 7-9). However, Merchant fails to suggest any mapping of a port identifier to a location of any connection port. In fact, again, Merchant is silent as to the location of any of the ports. Accordingly, Merchant fails to teach or suggest that the location-specific connection ports are identified by assigning a port identifier that is mapped to a location of the connection port as claimed in independent claims 7 and 18. Applicants respectfully

Appl. No.: 09/693,511
Amdt. dated 03/15/2006
Reply to Office action of 12/15/2005

submit that both Rijhsinghani and Denning also fail to teach or suggest the above recited feature. Accordingly, the above recited feature is yet more evidence of the patentability of independent claims 7 and 18 over the cited references taken either alone or in combination.

Claims 3-5, 8-11, 13, 14, 16 and 20-23 depend either directly or indirectly from corresponding independent claims 1, 7 and 18, and thus include all the recitations of their corresponding independent claims. Dependent claims 3-5, 8-11, 13, 14, 16 and 20-23 are patentable for at least the same reasons as given above for independent claims 1, 7 and 18.

Accordingly, for all the reasons stated above, Applicants respectfully submit that the rejections of claims 1, 3-5, 7-11, 13, 14, 16, 18 and 20-23 are overcome.

Claims 6 and 15

Claims 6 and 15 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Merchant, in view of Rijhsinghani, in view of Denning, and further in view of Hunt et al. (U.S. Patent No. 6,539,422, hereinafter "Hunt").

As stated above, Merchant, Rijhsinghani and Denning fail, individually and in combination, to teach or suggest a location-specific connection port as claimed in independent claims 1 and 7. Hunt is directed to an automatic data collection (ADC) device having a network communications capability. There is no teaching or suggestion in Hunt of any location-specific connection port. Thus, the cited references, either individually or in combination, fail to render independent claims 1 and 7 obvious. Claims 6 and 15 depend indirectly from independent claims 1 and 7, respectively, and thus include all the recitations of their corresponding independent claims. Dependent claims 6 and 15 are patentable for at least those reasons given above for independent claims 1 and 7.

Furthermore, even assuming Hunt discloses a location-specific connection port, Applicants continue to assert that Hunt is not a proper reference to be combined with Merchant, Rijhsinghani and Denning since Hunt is not analogous art. To rely on a reference under 35 U.S.C. §103, it must be analogous prior art. See MPEP 2141.01(a). The two-part test for analogous art requires that "the reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was

Appl. No.: 09/693,511
Amdt. dated 03/15/2006
Reply to Office action of 12/15/2005

BEST AVAILABLE COPY

concerned." *In re Oetiker*, 977 F.2d 1443, 1446, 24 USPQ2d 1443, 1445 (Fed. Cir. 1992). See also *State Contracting & Eng'g Corp. v. Condotta America, Inc.*, 346 F.3d 1057, 1069, 68 USPQ2d 1481, 1490 (Fed.Cir. 2003) (where the general scope of a reference is outside the pertinent field of endeavor, the reference may be considered analogous art if subject matter disclosed therein is relevant to the particular problem with which the inventor is involved). Hunt is directed to a method and system for remotely controlling operation of networked ADC devices, such as bar code readers. The problem to be addressed in this art is allowing a plurality of ADC devices to communicate to a network. To the contrary, the present application is directed to location-based identification of data packet senders/receivers. The problem to be addressed in this art is providing services responsive to the location of a user. Hunt and the present application are not in the same field of endeavor. Additionally, the present application involves determining a location of a network user. However, Hunt is unconcerned with the issue of network user location. There would be no reason for one skilled in the art of providing location-based services to look to the art of networking ADC devices. Therefore, Hunt is not reasonably pertinent to the particular problem with which the inventor was concerned. Thus, Hunt is not an appropriate reference under 35 U.S.C. §103. Furthermore, Applicants respectfully request that any subsequent rejection address the sufficiency of Hunt as a reference, since Applicants arguments have not yet been addressed on the record. Since neither Merchant, Rijhsinghani nor Denning teach a querying agent using Extensible Markup Language (XML) as claimed in claims 6 and 15, it is respectfully submitted that claims 6 and 15 are not obvious in view of the cited references.

Accordingly, Applicants respectfully submit that the rejections of claims 6 and 15 are overcome.

Claims 21 and 22

Claims 21 and 22 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Merchant, in view of Rijhsinghani, in view of Denning, and further in view of Hernandez et al. (U.S. Patent No. 6,208,977, hereinafter "Hernandez").

Appl. No.: 09/693,511
Amdt. dated 03/15/2006
Reply to Office action of 12/15/2005

As stated above, Merchant, Rijhsinghani and Denning fail, individually and in combination, to teach or suggest a location-specific connection port as claimed in independent claim 18. There is no teaching or suggestion in Hernandez of any location-specific connection port, nor is Hernandez cited as teaching such feature. Thus, the cited references, either individually or in combination, fail to render independent claim 18 obvious. Claims 21 and 22 depend directly from independent claim 18, and thus include all the recitations of independent claim 18. Accordingly, dependent claims 21 and 22 are patentable for at least those reasons given above for independent claim 18.

Although dependent claims 21 and 22 are patentable at least due to their dependency from independent claim 18, as stated above, there are still further reasons for the patentability of dependent claims 21 and 22. For example, the Office Action has failed to establish a prima facie case of obviousness with respect to dependent claims 21 and 22, since the Office Action fails to provide any motivation for combining Hernandez with the other references. In this regard, a teaching or motivation to combine the references is essential in order to properly combine references. *In re Fine*, 337 F.2d 1071, 1075 (Fed. Cir. 1988). In fact, the Court of Appeals for the Federal Circuit has stated that, “[c]ombining prior art references without evidence of such a suggestion, teaching, or motivation simply takes the inventor’s disclosure as a blueprint for piecing together the prior art to defeat patentability – the essence of hindsight.” *In re Dembiczak*, 175 F.3d 994 (Fed. Cir. 1999). Although the evidence of a suggestion, teaching, or motivation to combine the references commonly comes from the prior art references themselves, the suggestion, teaching, or motivation can come from the knowledge of one of ordinary skill in the art or the nature of the problem to be solved. *Id.* In any event, the showing must be clear and particular and “[b]road conclusory statements regarding the teaching effect of multiple references, standing alone, are not ‘evidence’.” *Id.* Although the final Office Action fails to assert any motivation to combine Hernandez and the cited references, Applicants respectfully submit that, in any case, the cited references fail to provide any clear and particular showing that would qualify as “evidence”, as required under the patent laws, of motivation to combine the cited references. Accordingly, Applicants respectfully submit that there is no motivation to combine the references.

Appl. No.: 09/693,511
Amdt. dated 03/15/2006
Reply to Office action of 12/15/2005

Since the references cannot properly be combined, it is respectfully submitted that the rejections of claims 21 and 22 based on the combination of these references is overcome.

Appl. No.: 09/693,511
Amdt. dated 03/15/2006
Reply to Office action of 12/15/2005

CONCLUSION

In view of the remarks submitted above, it is respectfully submitted that the present claims are in condition for immediate allowance. It is therefore respectfully requested that a Notice of Allowance be issued. The Examiner is encouraged to contact Applicants' undersigned attorney to resolve any remaining issues in order to expedite examination of the present invention.

It is not believed that extensions of time or fees for net addition of claims are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 16-0605.

Respectfully submitted,



Chad L. Thorson
Registration No. 55,675

Customer No. 00826
ALSTON & BIRD LLP
Bank of America Plaza
101 South Tryon Street, Suite 4000
Charlotte, NC 28280-4000
Tel Charlotte Office (704) 444-1000
Fax Charlotte Office (704) 444-1111

CERTIFICATION OF FACSIMILE TRANSMISSION

I hereby certify that this paper is being facsimile transmitted to the US Patent and Trademark Office at Fax No. (571) 273-8300 on the date shown below.


Nancy McPartland
Date

CLT01/48/041541